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 AND HUMAN SERVICES

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

JAMES C. PISTORINO,)	No. 3:23-cv-03112-AGT
)	
Plaintiff,)	REQUEST FOR CONSIDERATION OF
)	DOCUMENTS INCORPORATED BY
v.)	REFERENCE IN PLAINTIFF’S COMPLAINT
)	
U.S. DEPARTMENT OF HEALTH AND)	Date: September 6, 2024
HUMAN SERVICES,)	Time: 10:00 a.m.
)	Place: Courtroom A, 15th Floor
Defendant.)	
)	The Honorable Alex G. Tse

Defendant U.S. Department of Health and Human Services (“HHS”) respectfully requests that the Court consider the documents identified below, which are incorporated by reference in Plaintiff’s Complaint, Dkt. No. 1, in connection with Defendant’s Motion to Dismiss Plaintiff’s Complaint. The incorporation-by-reference doctrine allows a court to “consider ‘documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the [plaintiff’s] pleading.’” *Dunn v. Castro*, 621 F.3d 1196, 1205 n.6 (9th Cir. 2010) (quoting *Knieval v. ESPN*, 393 F.3d 1068, 1076 (9th Cir.2005) (alteration in *Knieval*)).

1. Plaintiff’s status inquiry, dated April 18, 2024, and the April 19, 2024, response of

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Centers for Medicare and Medicaid Services (“CMS”) to Plaintiff’s status inquiry. The content of this correspondence is alleged in Plaintiff’s Complaint. Dkt. No. 1 ¶ 8. A true and correct copy of this correspondence is attached hereto as **Exhibit A**.

2. CMS’s response to Plaintiff’s FOIA request. The content of this response is alleged in Plaintiff’s Complaint. Dkt. No. 1 ¶ 9. A true and correct copy of this correspondence is attached hereto as **Exhibit B**.

DATED: July 29, 2024

Respectfully submitted,

ISMAIL J. RAMSEY
United States Attorney

/s/ Pamela T. Johann
PAMELA T. JOHANN
Assistant United States Attorney

Attorneys for Defendant